



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 20, 1998

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation
Insurance Fund
221 West 6th Street, Suite 300
Austin, Texas 78701

OR98-0181

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111718.

The Texas Workers' Compensation Insurance Fund (the "Fund") received a request for "[a]ny and all completed investigations done by [the Fund]. . . . to debunk any claim for workers' compensation." In response to the request, you submitted to this office for review a representative sample of the surveillance tapes, which you contend is responsive.¹ You state that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with article 5.76-3, section 11A of the Insurance Code. We have considered the exception you claim and have reviewed the sample videotape that you have submitted.

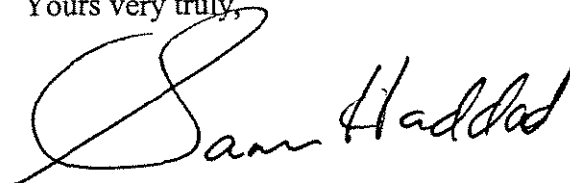
Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information made confidential by specific statutes. You assert that the requested information is made confidential by article 5.76-3, section 11A of the Insurance Code. Ins. Code art. 5.76-3, § 11A (Vernon's 1998).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Subsection (a) of section 11A provides that "[i]nformation maintained in the investigation files of the fund is confidential and may not be disclosed . . ." except in four limited circumstances not applicable here. Subsection (b) of section 11A further provides that "Fund investigation files are not open records for purposes of the open records law, Chapter 552, Government Code." *Id.* Investigation file is defined to mean "any information compiled or maintained by the fund with respect to a fund investigation authorized by law." Ins. Code art. 5.76-3, § 11A(d). You state that the information requested has been compiled and maintained by the Fund's Special Investigations Division as part of an investigation file pursuant to article 5.76-3, section 11 of the Insurance Code. Because the requested information appears to fall within the scope of section 11A, you must withhold this information.²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 111718

Enclosure: Submitted videotape

cc: Mr. Brian Collister, Reporter
KTBC-TV
119 East 10th Street
Austin, Texas 78701
(w/o enclosure)

²Subsection (c) of section 11A provides that "[i]nformation in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information." Ins. Code art. 5.76-3, § 11A (Vernon's 1998). The fund did not indicate that any of the information was information in or derived from a claim file, employer injury report, or occupational disease report, nor was this apparent from the face of the sample. Therefore, we do not address whether or not this type of information may be withheld from public disclosure.